

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 976

Short Title: Taxpayer Cost Recovery. (Public)

Sponsors: Representatives Blust; Capps, Cleveland, Culp, Daughtry, Gulley, Holloway, Lewis, McGee, McMahan, Moore, Rhodes, Setzer, Stam, Starnes, and Vinson.

Referred to: Finance.

March 29, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR REIMBURSEMENT OF EXPENSES TO A
2 PREVAILING TAXPAYER IN AN ADMINISTRATIVE APPEAL OR A
3 LAWSUIT IF THE STATE WAS NOT SUBSTANTIALLY JUSTIFIED IN
4 MAINTAINING ITS POSITION AGAINST THE TAXPAYER.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-241.2 is amended by adding a new subsection to
7 read:

8 "(b3) Payment of Taxpayer's Costs. – The Tax Review Board shall award costs, including reasonable attorneys' fees, to a taxpayer if the Board finds that the taxpayer is the prevailing party and that the Secretary was not substantially justified in the position asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the taxpayer substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues presented."

9 **SECTION 2.** G.S. 105-267 reads as rewritten:

10 **"§ 105-267. Taxes to be paid; suits for recovery of taxes.**

11 No court of this State shall entertain a suit of any kind brought for the purpose of
12 preventing the collection of any tax imposed in this Subchapter. Whenever a person has
13 a valid defense to the enforcement of the collection of a tax, the person shall pay the tax
14 to the proper officer, and that payment shall be without prejudice to any defense of
15 rights the person may have regarding the tax. At any time within the applicable protest
16 period, the taxpayer may demand a refund of the tax paid in writing from the Secretary
17 and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the
18 courts of the State for the amount demanded. The protest period for a tax levied in
19 Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all
20 other taxes is three years after payment.
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1 The suit may be brought in the Superior Court of Wake County, or in the county in
2 which the taxpayer resides at any time within three years after the expiration of the
3 90-day period allowed for making the refund. If upon the trial it is determined that all or
4 part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for
5 any reason invalid or excessive, judgment shall be rendered therefor, with interest, and
6 the judgment shall be collected as in other cases. The court shall award costs, including
7 reasonable attorneys' fees, to a taxpayer if the court finds that the taxpayer is the
8 prevailing party and that the Secretary was not substantially justified in the position
9 asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the
10 taxpayer substantially prevailed with respect to the amount in controversy or with
11 respect to the most significant issue or set of issues presented. The amount of taxes for
12 which judgment is rendered in such an action shall be refunded by the State.
13 G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not
14 in conflict with or superseded by this section."

15 **SECTION 3.** This act becomes effective September 1, 2005.